No. 136.

Reply Brief of Barnes for Appellant.

Filed Apr. 21, 1899.

In the Supreme Court of the United States,

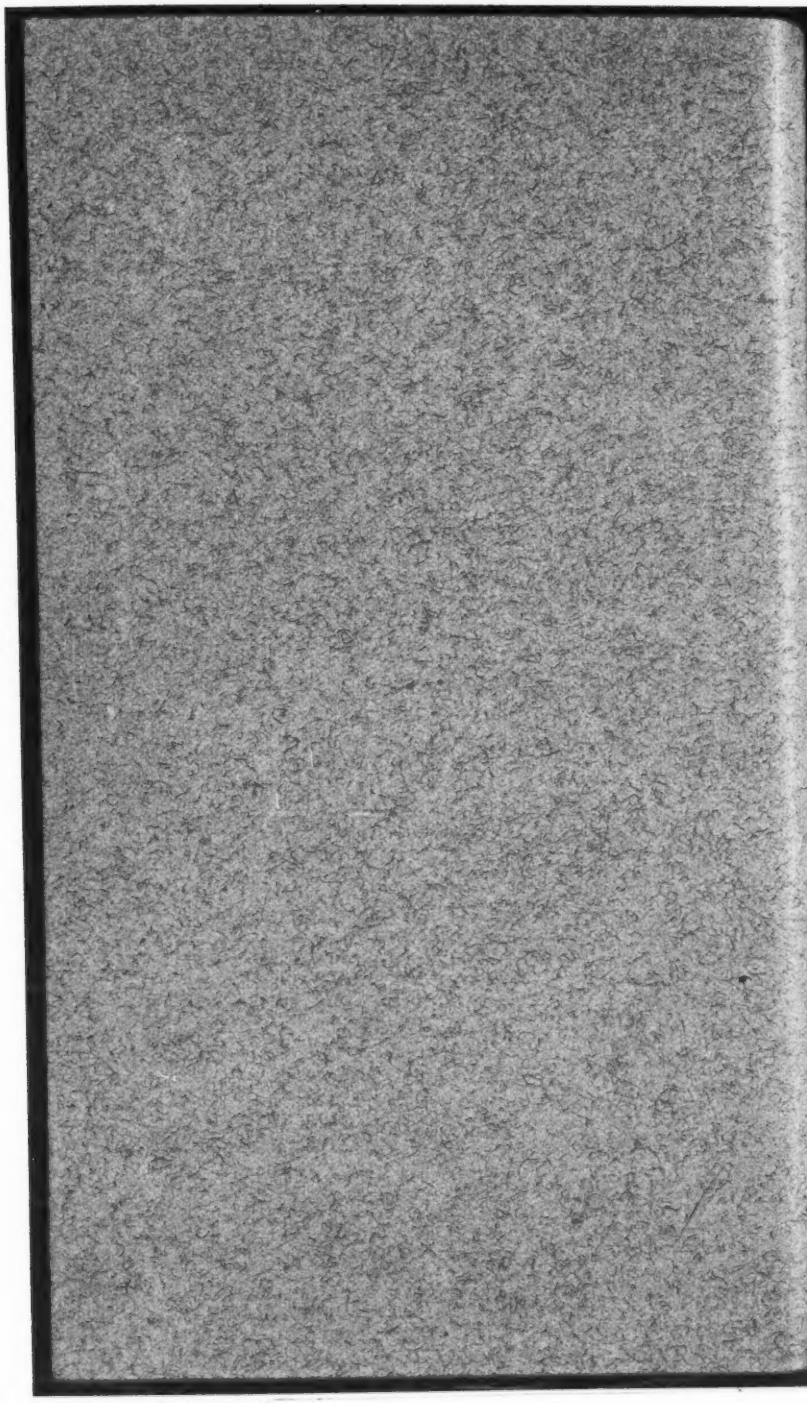
OCTOBER TERM, 1898.

ADOLPH COHN, Appellant,
vs.
ANGELA DIAS (DE DALEY, Appellee. } No. 136.

Appeal from the Supreme Court of the Territory of Arizona.

Reply Brief for Appellant.

WM. H. BARNES,
For Appellant.



In the Supreme Court of the United States,

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REPLY TO APPELLEE'S BRIEF.

We deem it necessary to call the attention of the Court to some of the matters urged by Appellee in their brief.

The first forty-four pages are devoted to mere questions of proceedure, upon questions of the sufficiency of the appeal, and six pages are devoted to the merits of the case

All of those questions apply to the sufficiency of the appeal from the trial Court to the Supreme Court of the Territory. Such questions are closed so far as this Court is concerned, except so far as the Appellant here has assigned them for error.

We point out the following, however, for consideration:

Tr. p. 88. The statement of facts was "approved and signed" by the trial judge. This settled all the disagreements as to what, in this case, constituted a correct statement of facts and made that document a part of the record.

When that statement became a part of the record in the case it became a subject of reference in the Bill of Exceptions. The bill was settled and signed by the trial judge and so became a part of the record. Tr. p. 18.

These were matters solely for the trial judge and could be raised in the Supreme Court of the Territory only by motion to strike out as not properly a part of the record.

Though that Court could if it saw proper, disregard a document which it held to be *not a part of the record.*

No such motion was made, and that court did not so hold.

The statement of facts and bill of exceptions signed as above stated were treated as parts of this record. The case was reversed once and affirmed three times as the record shows and as is admitted in Appellee's brief.

Tr. p. 100. Court orders that appellant have leave to file bond and that the cause "stand submitted." This in effect disposed of all pending motions and the cause stood for hearing upon the errors assigned.

All the points raised by the appellee in this Court in the first forty-four pages of his brief were so disposed of by the Supreme Court of the Territory. No cross-er-

rors have been assigend, if they may be, and this Court cannot consider any such question.

The errors to be considered are those assigned by Appellant

Tr. p. 118. Feb. 3rd, 1896, the court as a finality "reinstated" the judgment of July 10th, 1895 and "confirmed" the same. It is from this judgment we appeal. Appellants are not responsible for this ragged, vascillating record. We attack it. We ask that it be reversed.

II.

This appeal is taken from the Supreme Court of the Territory to this Court. The case came from the trial to the Supreme Court of the Territory. That appeal was prosecuted under the laws of this Territory. This appeal is prosecuted under the Acts of Congress. R. S. U. S. 1909.

This was a bill to quit title. It was a chancery case. It is governed by the practice in chancery. Sup. R. S. U. S. 1874-1891, p. 7.

The proviso on page 8 is to be considered The Supreme Court of the Territory of Arizona has never regarded this as mandatory and jurisdictional. That the requirements are met by general judgment. That an affirmance of the judgment of the trial court carried up the findings as made below. To secure such a certificate would require a mandamus by the Court itself. But the rule is different in a chancery case. The foregoing statute we construe to apply only to cases at law, while appeals from chancery decrees are goverened by the general statute and practice in equity.

The territorial courts derive their chancery jurisdiction from the Acts of Congress and not of the Territory.

The Organic Act of Arizona (R. S U. S., Sec. 1868) provides that the district courts respectively of every territory, shall possess chancery as well as common law jurisdiction.

In 1875 Congress enacted, as explanatory of that Section, that it shall not be necessary for said Court to exercise separately common law and chancery jurisdictions, and that the codes and rules of practice in the territory, in so far as they authorize the mingling of said jurisdicti ns or a uniform course of proceeding in all cases, legal or equitable, be confirmed, and that said proceedings heretofore had in said courts in conformity with said codes so far as relates to the form and mode of proceeding are hereby validated and confirmed. By these Acts the codes can only affect the forms of pleading but they cannot take away the substance of chancery pleading and practice. By that proceedure the whole case comes before the Court of last resort to jnquire whether the proper decree was made, and if not, to either make such decree or direct one to be made.

This case was before the Supreme Court of the Territory for that purpose and the decree of the trial court was affirmed The case is here with the same status. It is as if an appeal had been taken from the Circuit Court of the United States from a decree in chancery. This Court will consider all the evidence preserved, the exceptions taken, the decree rendered, and determine what decree ought to have been rendered. Encyc. Pl. & Pr. Vol. II p. 402.

"In equity appeals an appellate court may review "questions of fact and decide for itself whether the evi- "dence is sufficient to support the decision appealed "from."

In a note that work cites the cases from all the States, we cite from this Court.

U. S. v. Old Settlers, 148 U. S. 427.
Kimberly v. Arms 129 U. S. 525.
Camden v. Stewart 144 U. S. 105.
Crawford v. Neal 144 U. S. 585.
Tilgham v. Proctor 125 U. S. 137.
Callaghan v. Myers 128 U. S. 619.
Farrer v. Ferris 145 U. S. 132.
Dravo v. Fabel 132 U. S. 487.
Hewitt v. Campbell 109 U. S. 103.
Harrell v. Beal 17 Wall. 590.

Special findings are not necessary in equity.

Kehoe v. Taylor 31 Mo. App. 589.

While the conclusions of the lower court are very persuasive, yet, when it is clear that a wrong decree has been rendered the Court will overrule.

This is our contention in this case. That the appelle has not a leg to stand on.

Her brief in this case as to the merits shows her weakness and we respectfully urge, that this Court reverse the case and direct the Supreme Court of the Territory to reverse the case with a direction to the trial Court to render a decree that Plaintiff's title be quieted.

Respectfully,

WM. H. BARNES,
For Appellant.